

APPEAL NO. 021974
FILED SEPTEMBER 18, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on June 24, 2002. The hearing officer resolved the disputed issue by deciding that the appellant (claimant) was not entitled to supplemental income benefits (SIBs) for the first quarter. The claimant appeals, arguing that the hearing officer incorrectly applied the law and that the hearing officer did not understand or properly address the issue presented by the claimant at the CCH. The appeal file does not contain a response from the respondent (self-insured).

DECISION

Affirmed.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). Rule 130.102(b) provides that an injured employee who has an impairment rating of 15% or greater and who has not commuted any impairment income benefits (IIBs) is eligible to receive SIBs if, during the qualifying period, the employee: (1) has earned less than 80% of the employee's average weekly wage as a direct result of the impairment from the compensable injury; and (2) has made a good faith effort to obtain employment commensurate with the employee's ability to work.

Rule 130.102(d)(5) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has provided sufficient documentation as described in subsection (e) of Rule 130.102 to show that he or she has made a good faith effort to obtain employment. Rule 130.102(e) provides that, except as provided in subsection (d)(1), (2), (3), and (4) of Rule 130.102, an injured employee who has not returned to work and is able to return to work in any capacity shall look for employment commensurate with his or her ability to work every week of the qualifying period and document his or her job search efforts. That subsection then lists information to be considered in determining whether a good faith effort has been made.

The claimant argues on appeal that the hearing officer misunderstood the claimant's position and incorrectly applied the law. However, a review of the record reflects that the hearing officer correctly applied the law and there is sufficient evidence to support his determination.

Rule 130.101(2) specifically defines the first quarter as the thirteen weeks beginning on the day after the last day of the IIBs period. The claimant contends that he had no knowledge of a requirement that he look for work during the qualifying period for the first quarter because he did not receive notification from the Texas Workers'

Compensation Commission (Commission) of the date the qualifying period would begin until after the qualifying period had already commenced. We rejected a similar contention in Texas Workers' Compensation Commission Appeal No. 951487, decided October 19, 1995. In that decision, we noted that there is no good cause exception to the SIBS eligibility criteria; that ignorance of the law is no excuse; and that while the claimant does not waive his right to SIBS due to untimely filing where the Commission does not timely inform the claimant about his potential entitlement to SIBS, the actual SIBS period is not tolled. Texas Workers' Compensation Commission Appeal No. 981040, decided July 2, 1998 (Unpublished). Similarly, the Appeals Panel has held that the claimant is not relieved of his obligation to satisfy the statutory requirements for entitlement for SIBs when the Commission has made a tardy first quarter determination. Texas Workers' Compensation Commission Appeal No. 951487, *supra*; Texas Workers' Compensation Commission Appeal No. 000662, decided May 12, 2000; Texas Workers' Compensation Commission Appeal No. 010542, decided April 16, 2001.

The hearing officer is the sole judge of the weight and credibility to be given the evidence. Section 410.165(a). He determined that the claimant did not make a good faith effort to obtain and retain employment commensurate with his ability to work during the qualifying period for the first quarter of SIBs. Upon our review of the record, we conclude that the hearing officer's determination that the claimant was not eligible for SIBs for the first quarter is supported by the evidence, and that it is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 001360, decided July 27, 2000.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **(a certified self-insured)** and the name and address of its registered agent for service of process is

**C T CORPORATION SYSTEM
359 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Margaret L. Turner
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Gary L. Kilgore
Appeals Judge